
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

CENTRAL MILLING, LLC,
Plaintiff,

v.

DANIEL WEGGENMAN,
Defendant.

**MEMORANDUM DECISION AND
ORDER**

Case No. 1:11-CV-0088-CW

Judge Clark Waddoups

On March 13, 2012, this court ordered the parties to show cause why Plaintiff's complaint should not be dismissed for lack of federal jurisdiction and be remanded to state court. (Dkt. No. 8.) The Tenth Circuit has clearly articulated that "there is a presumption against removal jurisdiction." *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995). Accordingly, "[a]s the parties invoking the federal court's jurisdiction [through removal], defendants bear the burden of establishing that the requirements for the exercise of diversity jurisdiction are present." *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir. 2001); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) ("The 'strong presumption' against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.")

In light of this requirement, the court's order stated that "Defendant has failed to demonstrate on removal that diversity exists between the unincorporated organization's members and Defendant." (Dkt. No. 8, 2.) Defendant replied with two points: (1) Defendant explained that he is not a member of Plaintiff organization, and (2) that "Defendant is unaware of the current members of Plaintiff as it is not alleged in Plaintiff's complaint." (Dkt. No. 9, 2.). On removal,

the Defendant carries the burden to demonstrate complete diversity. In this case, that burden required the Defendant to show that all members of the Plaintiff LLC are diverse from the Defendant. The Defendant has failed to make that showing and the court is required to remand.

The case is DISMISSED and REMANDED to state court.

DATED this 26th day of March, 2012.

BY THE COURT:


Clark Waddoups
United States District Judge